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No.

Supreme Court, U.S.
FILED
APR 29 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

MILDRED HESTERMAN, EXECUTRIX OF THE ESTATE OF LEONARD HESTERMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL APPENDIX

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHEVRON U.S.A., INC., No: C-791349-WAI

Plaintiff,

v. DECISION

UNITED STATES OF AMERICA;
WILLIAM H. BAZINETT, individually;
WILLIAM H. BAZINETT, as Executor
of the Estate of Catherine L.
Bazinett; WILLIAM H. BAZINETT,
as Executor of the Estate of
Joseph Herbert Bazinett; and
LEONARD HESTERMAN,

Defendants.

_____/

UNITED STATES OF AMERICA,

Cross-Claimant,

v.

LEONARD HESTERMAN,

Defendant on
Cross-Claim.

_____/

Hesterman is entitled to the interpleaded funds and to future payments under the lease. The United States is entitled to

take nothing by its cross-claim. Each side shall bear its own costs.

I.

GIFT TAX

The United States is not entitled to recover the impleaded funds on the basis of the asserted liability of the Bazinett estates for gift taxes.

Hesterman gave an adequate consideration for the assignment of the lease and the conveyance of the underlying fee. Enochs v. Smith, 359 F.2d 924 (5th Cir. 1966).

The United States concededly was untimely in the refiling in Calaveras County of its notices of tax lien, the time for the filing of which is specified in 26 U.S.C. Section 6323(g)(1)(2) and (3). The United States therefore lost its priority to levy assessments.

Hesterman is a bona fide bargain purchaser within the meaning of 26 U.S.C. Section 6323. The consideration paid by him was more than nominal, and it need not

reflect the value of the property acquired. H.R. Rep. No. 1884, 89th Cong., 2d Sess. 49 (1966).

The United States is entitled to take nothing by its cross-claim.

Lack of confirmation of sale by the probate court does not diminish Hesterman's title. Even assuming that such confirmation is required, no authority is cited to establish that a failure to obtain confirmation of sale has any effect other than to surcharge the executor. See Estate of Spiritos, 34 Cal.3d 479 (1973); Estate of Hilde, 112 Cal.2d 189 (1952).

II.

ESTATE TAX

Hesterman is a purchaser within the meaning of 26 U.S.C. Section 6321(h)(6)(A). Therefore, the general tax lien provided in 26 U.S.C. Section 6323(a)), because of the failure of the United States to give the applicable notice.

The special estate tax lien provided by

the provisions of 26 U.S.C. Section 6324(a) is invalid because more than ten years have passed between the deaths of decedents that ten year period describes the duration of the lien rather than a limitation within which actions must be brought. United States v. Cleavinger, 325 F. Supp. 871 (N.D. Ind. 1971). United States v. Silverman, 621 F.2d 961 (9th Cir. 1980), relied upon by the Government, is not apt because it rests upon the application of the operation of 26 U.S.C. Section 6502(b) suspension of a statute of limitations. The ten year lien duration of Section 6324 has lapsed.

Since Hesterman is a purchaser and the lien period has lapsed, the United States has no priority in the interpleaded fund or in the future lease payments.

Furthermore, although the Government does not address the point, it would appear that any special estate tax lien which attached to the Calaveras property upon the death of the decedents transferred by operation of 26

U.S.C. Section 6324(a)(2) to the consideration given by Hesterman for the Calaveras property and for the assignment of the lease.

Let judgment be entered accordingly.

Dated: 12/23/81

WILLIAM A. INGRAM
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHEVRON U.S.A., INC., No: C-791349-WAI

Plaintiff,

v. JUDGMENT

UNITED STATES OF AMERICA;
WILLIAM H. BAZINETT, individually;
WILLIAM H. BAZINETT, as Executor
of the Estate of Catherine L.
Bazinett; WILLIAM H. BAZINETT,
as Executor of the Estate of
Joseph Herbert Bazinett; and
LEONARD HESTERMAN,

Defendants.

_____/

UNITED STATES OF AMERICA,

Cross-Claimant,

v.

LEONARD HESTERMAN,

Defendant on
Cross-Claim.

_____/

This cause having come on duly for trial, and evidence both oral and documentary having been received and considered,

together with the argument of counsel, and good cause appearing therefore,

IT IS ORDERED, ADJUDGED AND DECREED that Leonard Hesterman have judgment entitling him to the future proceeds of the lease in issue herein, and that the United States take nothing by its cross-claim.

Each side to bear its own costs.

Dated: 12/23/81

WILLIAM A. INGRAM
United States District
Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHEVRON U.S.A., INC., No: C-791349-WAI

Plaintiff,

v. JUDGMENT

UNITED STATES OF AMERICA; WILLIAM H. BAZINETT, individually; WILLIAM H. BAZINETT, as Executor of the Estate of Catherine L. Bazinett; WILLIAM H. BAZINETT, as Executor of the Estate of Joseph Herbert Bazinett; and LEONARD HESTERMAN,

Defendants.

_____/

UNITED STATES OF AMERICA,

Cross-Claimant,

v.

LEONARD HESTERMAN,

Defendant on Cross-Claim.

_____/

On May 17, 1983, the Ninth Circuit (705 F.2d 1487) reversed the court's judgment entered on January 5, 1982. In accordance

therewith and with the court's order entered this date,

IT IS ORDERED, ADJDUGED AND DECREED that the United States is entitled to all the funds interplead and/or deposited by plaintiff Chevron U.S.A. Inc., with the Clerk of the Court and to all future rentals payable by Chevron U.S.A., Inc., under the terms of a service station lease entered into on or about November 1, 1971, in Calaveras County, California, which are the subject of this action. The Clerk of the Court shall pay over to the United States all funds plus interest held by it from deposits made by Chevron U.S.A., Inc., and Chevron U.S.A., Inc., shall pay to the United States all future rental payments until the government's lien claims are satisfied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the United States shall have judgment in its favor on the cross-claim against the Estat of Leonard Hesterman for

the failure of Leonard Hesterman to honor notices of levy served on him in 1977. The Estate of Leonard Hesterman is ORDERED to account and pay over to the United States all rental payments, together with costs and interest as provided for in 26 U.S.C. Section 6332(c)(1), received by Leonard Hesterman from Chevron U.S.A., Inc., as a result of the service station lease agreement entered into in November 1971.

Dated: 2/14/84

WILLIAM A. INGRAM
United States District
Judge